

**MINUTES
of the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**May 21, 2008
Room 322, State Capitol
Santa Fe, New Mexico**

The first meeting of the Indian Affairs Committee for the 2008 interim was called to order by Representative James Roger Madalena, co-chair, at 10:24 a.m. on Wednesday, May 21, 2008, in Room 322 of the State Capitol in Santa Fe.

Present

Rep. James Roger Madalena, Co-Chair
Rep. Ray Begaye
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Staff

Chase Van Gorder
Larry Matlock

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Absent

Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Justine Fox-Young
Sen. John C. Ryan
Rep. W. C. "Dub" Williams

Sen. Joseph J. Carraro
Sen. Timothy Z. Jennings
Sen. William E. Sharer
Sen. David Ulibarri

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Interim Committee Protocols

Paula Tackett, director, Legislative Council Service (LCS), briefed the committee on various topics concerning protocol during interim committee meetings. Items discussed included quorum requirements for voting purposes and for payment of per diem and mileage, appointment of temporary committee members for quorum purposes, voting on and approval of committee business, chairing committee meetings, voting member calendar conflicts, scheduling and committee staffing.

2008 Legislation — Summary

Mr. Van Gorder reviewed with the committee the fate of bills endorsed by the committee for the 2008 legislative session as well as the fate of other bills that may be of interest to committee members. One substantive bill endorsed by the committee that was passed was Senate Bill 18 regarding the reversion of capital outlay appropriations to the Tribal Infrastructure Project Fund. Two other substantive bills of interest that passed were House Bill 236 regarding off-reservation Native American health and Senate Bill 574 regarding the refund of taxes withheld from Native American veterans. A compromise bill that would have imposed a surtax on uranium mining and milling activities to fund the cleanup of abandoned uranium mining and milling sites passed the legislature, but was vetoed by the governor. Questions and discussion by committee members concerned the reauthorization process, the drafting of bills throughout the interim, pre-filing legislation and duplicate bills.

Public Utility Taxation on Tribal Lands — Update

Jason A. Marks, chair, Public Regulation Commission (PRC), briefed the committee on the PRC's investigation of complaints regarding the alleged improper collection of state and county taxes by utilities serving Native American customers residing on tribal lands. The collection of such taxes by the state is preempted by federal regulations. The PRC first looked into this matter in 2001. Following workshops attended by tribal representatives, telecommunication companies and the Taxation and Revenue Department (TRD), the telecommunication companies formulated various solutions to the problem, including the use of an "opt-out" form to be used by Native American customers. The PRC was made aware in late 2007 that these solutions were not working and recently opened a new inquiry into the matter. On May 19, the PRC conducted its first workshop on the current inquiry, and participants included many of the pueblos, as well as the Navajo Nation and representatives of telecommunication companies and the TRD. It was determined that the opt-out forms currently being used by telecommunication companies have had only moderate success, that privacy concerns were a barrier to consumers' use of such forms and that their use was a burden to consumers. A second workshop will be conducted on July 11, 2008, and the PRC will engage in government-to-government consultation with tribal entities regarding this issue.

Jim Nunns, tax policy director, TRD, also briefed the committee on this issue. Mr. Nunns reviewed the current state regulations regarding the collection of gross receipts taxes from telecommunication and public utility companies for services provided to Native Americans

residing on tribal lands. Mr. Nunns reviewed the ways in which telecommunication and public utility companies have been attempting to comply with the existing restrictions on the collection of gross receipts taxes from Native American customers. Concerns raised by participants at the May 19 meeting included public awareness of the prohibition on the collection of taxes in certain circumstances, privacy concerns with the use of the opt-out forms, the movement of tribal customers, unclear or changing physical boundaries of tribal lands and non-uniformity in utility billing statements.

Brian Harris, an attorney with the Office of the Attorney General, indicated that his office would be heavily involved as the PRC investigation continues.

Following the presentations, Senator Lovejoy expounded upon the history of the problem of improper collection of taxes from Native American customers by telecommunication and public utility companies.

Native American Veterans' State Income Tax Settlements — Update

John Garcia, secretary of veterans' services, and Rick Homans, secretary of taxation and revenue, addressed the committee regarding efforts to implement Senate Bill 574, which passed during the 2008 legislative session. Secretary Garcia gave the history of a recent lawsuit against the state on behalf of Native American veterans who claim that state income taxes were inappropriately withheld from their military pay while they were on active duty. Eleven of the claimants received settlement payments in a total amount of just over \$28,000; the amount of the individual settlements ranged from \$856 to \$1,828. The rest of the claimants were barred from recovery because of the applicable statute of limitations. Senate Bill 574 directed the Veterans' Services Department (VSD), in cooperation with the TRD, to determine how many Native American veterans may have had state income taxes unlawfully withheld from their pay while on active duty and the amount of state taxes inappropriately withheld and to propose a manner in which such veterans could receive settlement payments for inappropriately withheld state income taxes. Secretary Garcia reviewed the history of personal income taxes in New Mexico. Employer withholding of personal income tax did not begin in New Mexico until 1961; as best as they could determine, the U.S. Department of Defense did not start withholding income taxes from active duty military until July 1977. The total number of living Native American veterans who may have had state personal income taxes withheld from their military pay is 7,585; the number of Native Americans who served during the target time period is unknown at this time. Representatives of the TRD, VSD and Indian Affairs Department (IAD) have met to discuss how to fulfill the mandate set forth in Senate Bill 574; the VSD has also met with the All Indian Pueblo Council and other Native American groups to discuss this issue. The TRD and the VSD will be working to identify Native American veterans who served between 1977 and 2004 and the amount of taxes that may have been improperly withheld. A final report with recommendations will be ready for presentation to the committee in October 2008.

Indian Affairs Department — Update

Alvin H. Warren, secretary of Indian affairs, introduced himself and his staff to the committee. He also thanked the committee for its support for and collaboration with the IAD and for introducing and supporting legislation relating to New Mexico's Native American population. Secretary Warren reviewed with the committee his initial priorities as the new secretary of Indian affairs: 1) to continue to improve management of capital outlay funds; 2) to expand the department's involvement in policy development; 3) to strengthen the role of tribal liaisons in state agencies; 4) to improve the protocols for tribal consultation by state agencies; 5) to increase the capacity of the IAD; 6) to broaden partnerships between the IAD and other entities, including foundations, nonprofit organizations and universities; and 7) to make New Mexico a leader in improving state-tribal relations and work fairly with all tribal entities in New Mexico. Secretary Warren also suggested several topics that the committee may want to consider during the 2008 interim: building stronger government-to-government relations between the state and tribal entities, providing sufficient funding for tribal infrastructure projects, encouraging appropriate educational programs, funding and facilities, Native American health issues, wastewater infrastructure and Native American water rights, tribal economic development and environmental issues, such as the resumption of uranium mining and milling and the protection of sacred sites.

Rebecca Martinez, capital outlay manager for the IAD, reviewed with the committee the capital outlay appropriations approved during the 2008 legislative session. The legislature approved approximately \$1.8 million for vehicles and equipment and \$19.7 million for infrastructure and construction to be managed by the IAD on behalf of tribal entities. Additional capital outlay appropriations to benefit tribal communities were made through other state agencies, such as the Aging and Long-Term Services Department and the Department of Environment. The IAD has received scopes of work for 56% of the projects approved by the 2008 legislature. Ms. Martinez described the process the IAD went through to determine which projects would need to be reauthorized by the legislature in 2008. Twenty-seven projects totaling approximately \$2.5 million were reauthorized in 2008. Forty-five projects totaling approximately \$1.1 million affecting the Navajo Nation may revert as of June 30 because those projects were not identified as needing to be reauthorized, yet they may not be ready to close out by June 30. Ms. Martinez reviewed the outreach and capital outlay training sessions being done by the IAD and outlined the process for projects to be funded through the Tribal Infrastructure Project Fund beginning in 2008. In response to questions from Representative Begaye, Ms. Martinez reviewed the efforts that are being made to assist the Navajo Nation in streamlining the process for the approval of capital outlay projects and encumbering appropriated funds.

2008 Interim Work Plan and Meeting Schedule Development

Mr. Van Gorder presented the committee with a draft proposed work plan for the 2008 interim and explained how the initial dates and places for committee meetings had been determined. In reviewing topics to be discussed during the interim, Senator Lovejoy requested that Secretary of Public Education Veronica Garcia and the chair of the Indian Education Advisory Council be asked to make a presentation regarding the Indian Education Act. She also asked that tribal emergency management be discussed. Representative Begaye asked that truancy laws be discussed, as well as disproportionate sentencing for minorities convicted of

crimes and funding for domestic violence programs. Senator Rainaldi moved that the proposed work plan be approved subject to a final review by the committee co-chairs. Representative Begaye seconded the motion and it passed without objection.

Adjournment

There being no further business before the committee, the first meeting of the Indian Affairs Committee for the 2008 interim was adjourned at 4:05 p.m.